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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,860	01/15/2004	Jason D. Bivens	HES 2003-IP-011909U1	4618
29920	7590	03/02/2005	EXAMINER	
JOHN W. WUSTENBERG			LAU, TUNG S	
P.O. BOX 1431			ART UNIT	
DUNCAN, OK 73536			PAPER NUMBER	
			2863	

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,860

Applicant(s)

BIVENS ET AL.

Examiner

Tung S. Lau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11 and 13-18 is/are rejected.
- 7) ☒ Claim(s) 3 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendments to the Specification

1. Amendments to the Specification has been accepted by the examiner.

Election/Restrictions

2. Claims 19-25 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention as noted in paper dated 11-29-2004 and 2-9-2005.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-11, 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Krueger (U.S. Patent 4,474,063).

Regarding claim 1:

Krueger discloses a method of determining a corrected weight of a batching tank, the batching tank adapted to receive one or more materials, each material having a density, the batching tank having a weight, a pressure, and a volume, wherein the batching tank initially comprises a fluid having a density, the method comprising: measuring one or more first weights of the batching tank, wherein the first weights are determined while the fluid is removed from the batching tank (Col. 1-2, Lines 55-36); measuring one or more first pressures in the batching

tank, wherein each first pressure is determined substantially simultaneously with the determination of a first weight (Col. 1-2, Lines 55-36); measuring one or more second weights of the batching tank, wherein each second weight is measured while a material is transferred into the batching tank; measuring one or more second pressures in the batching tank (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57), wherein each second pressure is measured substantially simultaneously with the measurement of each second weight (Col. 1-2, Lines 55-36); and determining a corrected weight of the batching tank based on one of the second weights, one of the second pressures, one or more first weights, one or more first pressures, the density of the material being transferred to the batching tank, and the density of the fluid (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57).

Regarding claim 10:

Krueger discloses a method of transferring material to a batching tank, the material having a density, the batching tank having a weight, a pressure, and a volume, the batching tank initially comprising a fluid having a density, the method comprising: removing fluid from the batching tank (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57); measuring one or more first weights of the batching tank (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57), wherein the first weights are determined while the fluid is removed from the batching tank; measuring one or more first pressures in the batching tank (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57), wherein each first pressure is measured substantially simultaneously with the measurement of the first weight; transferring a material to the batching tank (Col.

1-2, Lines 55-36, Col. 6, Lines 10-57); measuring a second weight of the batching tank, wherein the second weight is measured while the material is being transferred into the batching tank; measuring a second pressure in the batching tank, wherein the second pressure is measured substantially simultaneously with the measurement of each second weight (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57); and determining a corrected weight of the batching tank based on the second weight, the second pressure, one or more first weights, one or more first pressures, and one or more material properties (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57).

Regarding claims 2, 11, Krueger further discloses determining a volume occupied by the fluid (Col. 1-2, Lines 55-36); determining a volume occupied by the material (Col. 1-2, Lines 55-36); determining a fluid weight by multiplying the volume occupied by the fluid by the density of the fluid (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57); determining a material weight by multiplying the volume occupied by the material by the density of the material (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57); and determining the corrected weight by adding the material weight and the fluid weight (Col. 1-2, Lines 55-36, Col. 6, Lines 10-57);

Regarding claims 4, 13, Krueger further discloses the tank filled with material (abstract); Regarding claims 5, 14, Krueger further discloses the material is flowing (Col. 1, Lines 10-52, fig. 1); Regarding claims 6, 15, Krueger further discloses material is halted from flowing into the batching tank when the corrected weight is near a target weight (fig. 1, unit 18, Col. 6, Lines 10-57);

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Regarding claims 7, 16, Krueger further discloses transferring current material (fig. 1, unit 18, Col. 6, Lines 10-57); Regarding claims 8, 17, Krueger further discloses correct weight of next material (fig. 1, unit 18, Col. 6, Lines 10-57); Regarding claims 9, 18, Krueger further discloses log in first weight and pressure (Col. 1-2, Lines 55-36).

Claim Objections

4. Claims 3 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitation of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: prior art fail to teach selecting a first weight, wherein the first weight was measured substantially simultaneously with the closest first pressure, and wherein the closest first pressure is nearest the second pressure; and calculating the density of the fluid by dividing the selected first weight by the volume of the batching tank.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

5. Applicant's arguments filed 2/9/2005 have been fully considered but they are not persuasive.

A. Applicant argues in the arguments that the prior art does not show the 'determining a corrected weight of a batching tank which takes into account the pressure in the tank'. Krueger discloses 'determining a corrected weight of a batching tank which takes into account the pressure in the tank' in Col. 1-2, Lines 55-36.

B. Applicant continues to argue in the arguments that the prior art does not show 'determining a corrected weight of the batching tank based on one of the second weights, one of the second pressures, one or more first weights, one or more first pressures, the density of the material being transferred to the batching tank, and the density of the fluid'. Krueger discloses 'determining a corrected weight of the batching tank based on one of the second weights, one of the second pressures, one or more first weights, one or more first pressures, the density of the material being transferred to the batching tank, and the density of the fluid' in Col. 1-2, Lines 55-36, Col. 6, Lines 10-57.

The examiner reminds to the applicants that during patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is

justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). While the meaning of claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allowed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

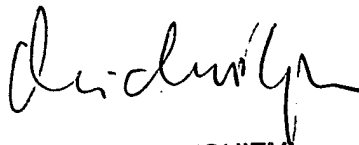
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 571-272-

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2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TL



MICHAEL NGHIEM
PRIMARY EXAMINER

2/25/05